

Bingham McCutchen LLP
GRÉGOR Y LIPPETZ (SBN 154228)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286
gregory.lippetz@bingham.com

Bingham McCutchen LLP
RICHARD S. TAFFET *Pro Hac Vice*
(NY SBN 1721182)
399 Park Avenue
New York, NY 10022-4689
Telephone: (212) 705-7000
Facsimile: (212) 752-5378
richard.taffet@bingham.com

Bingham McCutchen LLP
ROBERT C. BERTIN *Pro Hac Vice*
(VA Bar No. 42,478)
2020 K Street, NW
Washington, DC 20006
Telephone: (202) 427-4126
Facsimile (202) 373-6413
r.bertin@bingham.com

Attorneys for Plaintiff/Counterdefendant
SANDISK CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SANDISK CORPORATION,

Plaintiff,

vs.

LUCENT TECHNOLOGIES INC. and
ALCATEL-LUCENT, S.A.,

Defendants.

AND RELATED COUNTERCLAIM

Case No.: C 07 03618 JF

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF
PLAINTIFF/COUNTERDEFENDANT
SANDISK CORPORATION'S MOTION
TO DISMISS DEFENDANT LUCENT
TECHNOLOGIES INC.'S
COUNTERCLAIM

Date: November 30, 2007
Time: 9:00 a.m.
Location: Courtroom 3

1 Plaintiff/counterdefendant SanDisk Corporation ("SanDisk") hereby requests the
 2 Court take Judicial Notice under Federal Rule of Civil Procedure 201 of the SanDisk-Thomson
 3 License Agreement, attached to the Declaration of Joe Novak as Exhibit A. This Request for
 4 Judicial Notice is submitted in support of SanDisk's Motion to Dismiss Defendant Lucent
 5 Technologies Inc.'s ("Lucent") Counterclaim, filed herewith.

6 A court may take judicial notice of a fact "not subject to reasonable dispute in that it
 7 is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of
 8 accurate and ready determination by resort to sources whose accuracy cannot be reasonably
 9 questioned." *See* Fed. R. Evid. 201(b). A district court ruling on a motion to dismiss may consider
 10 a document the authenticity of which is not contested, and upon which the plaintiff's complaint
 11 necessarily relies. *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir.1998); *see also Global*
 12 *Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2nd Cir. 2006). ("On a motion to
 13 dismiss for failure to state a claim, a court may consider materials extrinsic to the pleadings
 14 notwithstanding the conversion requirement, if . . . the materials are integral to the complaint . . .").
 15 "In most instances where this exception is recognized, the incorporated material is a contract or
 16 other legal document containing obligations upon which the plaintiff's complaint stands or falls."
 17 *Id.*

18 The SanDisk-Thomson License is properly subject to judicial notice. There can be no
 19 dispute over the authenticity of the SanDisk-Thomson license. Nor can there be any question but
 20 that Lucent's Counterclaim stands or falls on the license. In fact, in its Motion to Dismiss filed on
 21 October 12, 2007 in this Court, Lucent admits not only to the existence of the license, but also to its
 22 effect:

23 Similarly, if the Federal Circuit upholds the district court's
 24 determination [in the *Microsoft* case] that Fraunhofer has the
 25 right to license the '080 patent, that determination will
 26 inform -- if not resolve -- SanDisk's license claim based on
 its own alleged agreement with Fraunhofer.

27 Defendants' Motion To Dismiss Without Prejudice Or Stay Pending Resolution Of Appeal In
 28 Related Case at 5:11-14. Since there can be no dispute over the authenticity of the SanDisk-

1 Thomson license, and the license is integral to the resolution of Lucent's counterclaim, the license
2 is exactly the type of document appropriate for judicial notice under Rule 201.

3 Therefore, SanDisk respectfully requests that the Court take
4 judicial notice of the following:

5 Patent License Agreement mp3 Coded: the agreement between SanDisk and
6 Thomson whereby SanDisk obtained the rights to practice the Fraunhofer MP3 patents, attached as
7 Exhibit A to the Declaration of Joe Novak filed in support of SanDisk's Motion For Summary
8 Judgment. A true and correct copy is also attached hereto.

9
10 Dated: October 26, 2007

BINGHAM McCUTCHEN LLP

11
12 By: /s/ Gregory L. Lippetz
13 Gregory L. Lippetz
14 Attorneys for Plaintiff/Counterdefendant
15 SanDisk Corporation
16
17
18
19
20
21
22
23
24
25
26
27
28